104

S. Hrg. 104–530

NOMINATION OF ROBERT E. MORIN

Y 4. G 74/9: S. HRG. 104-530

Nomination of Robert E. Morin, S.Hr...

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

NOMINATION OF ROBERT E. MORIN, TO BE ASSOCIATE JUDGE, SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

MARCH 25, 1996

Printed for the use of the Committee on Governmental Affairs

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NOMINATION OF ROBERT E. MORIN TO BE ASSOCIATE JUDGE, SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

MONDAY, MARCH 25, 1996

U.S. SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., in room SD–342, Dirksen Senate Office Building, Hon. William S. Cohen, presiding.

Present: Senator Cohen.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Today, the Committee on Governmental Affairs is pleased to welcome Mr. Robert Edward Morin, nominee for a 15-year term as an associate judge on the Superior Court for the District of Columbia. Mr. Morin has a broad range of litigation, trial, and teaching experience. For nearly 10 years, he has been a partner at Fisher, Morin & Hansen in Washington, D.C., specializing in criminal and civil litigation. During this period, he has also taught as an adjunct professor at Georgetown University Law Center on evidence and capital punishment. He donates a substantial portion of his time to do pro bono work and frequently makes presentations to conferences for purposes of training other lawyers and litigating criminal and capital cases.

His professional career also includes serving as an assistant public defender in the Maryland Public Defender's office. Prior to that, he was a supervisor in the criminal division of the D.C. Law Students in Court Program, a clinical legal education program created to help the poor receive free legal representation and counseling in the D.C. Superior Court. Mr. Morin received a BA from the University of Massachusetts at Amherst, a JD from Catholic University and has been a resident of the District for more than 20 years.

It is customary at nomination hearings before the Committee on Governmental Affairs to summarize for the record the confirmation procedure which is prescribed by Committee Rule 8, which was adopted back in 1978. This procedure is meant to ensure a thorough investigation of the nominee's background, qualifications, integrity and suitability to serve in the capacity for which he or she has been nominated. The nominee has given detailed information to the Committee about his professional achievements. He furnished complete financial statements, and this information was re-

viewed by the Committee staff. It has been available for public inspection at the Committee.

The FBI conducted a thorough background investigation of the nominee, and a report of that investigation was reviewed by myself and Senator Glenn, who is the ranking minority member of the full Committee. The nominee was also interviewed by members of the Committee staff. The summary of the Committee's investigation is being kept confidential.

At this point, I want to extend to the nominee our appreciation for his cooperation through all phases of the nomination process. Would you now please stand and raise your right hand?

[Witness sworn.]

Senator COHEN. Before we go any further, I would like to ask you to introduce your family. I understand you have your wife and children in the audience.

Mr. MORIN. Thank you.

Senator COHEN. Perhaps you could point them out to me and introduce them by name. Maybe they could stand so I can see if their dad can hear well enough at this hearing to qualify him to be a judge. [Laughter.]

TESTIMONY OF ROBERT E. MORIN, NOMINEE TO BE ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. MORIN. Thank you, Senator. In the front row, I have my two sons, Kristopher Morin and Willem Morin, and they invited their two best friends, Benjamin Lagos and Daniel Lagos.

Senator COHEN. Are they going to be testifying for you or against you? [Laughter.]

Mr. MORIN. The reason they wanted to come is that they are all fluent in Spanish, and they thought you may have some questions in Spanish, and they could translate for me. So that is why they wanted to come.

And in the second row is my wife, Martha Tomich, and a family friend, Penny Lagos, mother of Daniel and Benjamin.

Senator COHEN. Welcome. We are going to check on your father to see if his hearing is adequate and whether he needs some sort of a hearing aid that will help him to perform his duty on the court.

Mr. Morin, I will ask you a series of standard questions.

Mr. MORIN. Sure.

Senator COHEN. Do you know of any reason, personal or otherwise, which would prevent you from fully and honorably discharging your responsibilities on the court to which you have been nominated?

Mr. MORIN. I do not.

Senator COHEN. Barring something unforeseen, if you are confirmed, are you prepared to serve a full 15-year term?

Mr. MORIN. Yes, Senator.

Senator COHEN. Are you aware of anything else in your personal or professional background which would pose any conflict of interest with the position and responsibilities for which you have been nominated?

Mr. MORIN. No.

Senator COHEN. If a conflict of interest should present itself, how would you resolve such a conflict?

Mr. MORIN. I would first check with colleagues on the bench and the chief judge, and then, we have the Judicial Tenure Commission, which also assists us in resolving conflicts. I frankly do not expect many conflicts, because I do not have any business interests, and the only conflict I would have is if my partner appeared before me, and I would recuse myself.

Senator COHEN. You do not have any prior clientele that would still be retained by the law firm that might come before you?

Mr. MORIN. Most of my clientele are appointed, so I do primarily appointed cases. I rarely have a retained case, to tell you the truth.

Senator COHEN. Do you agree without reservation to respond to any reasonable summons to appear and testify before a duly-constituted Committee of Congress if you are confirmed?

Mr. MORIN. Absolutely.

Senator COHEN. Let me ask you a couple of additional questions.

Mr. MORIN. Sure.

Senator COHEN. I try to be as punctual as possible and hope that courts also perform the same punctuality. I just received a copy of "Guilty: The Collapse of Criminal Justice," by Judge Harold J. Rothwax. Have you had a chance to look at this book?

Mr. MORIN. I have not read it, although I have seen him interviewed on television a number of times, and I have heard his comments substantively about some of his proposals.

Senator COHEN. Do you have any reaction to what you have seen?

Mr. MORIN. I think some of them are well-founded, frankly. Some of them are not particularly well-founded.

Senator COHEN. I am going to go through a few of them.

Mr. MORIN. Surely.

Senator COHEN. I have not had much of a chance to look through it, but in the beginning chapter, he points out that Sir Edward Cook, who was chief justice of the King's Bench in England, once said a judge ceaseth to have friends. He says: "That is an overstatement; at least I hope it is. But sometimes, it seems like the truth: When a judge mounts the bench, he leaves his relationships behind." And he goes on to explain exactly why that is the case, because he has a number of tough cases that come before him. He used to be a very active member of the ACLU. I assume his sympathies were on the defense side of the bar as opposed to the prosecution. Yet, it did not take him very long before he was put into the mix and the whirl of life as a trial judge in an urban center, in which he became known as the prince of darkness.

Mr. MORIN. Well, I think that is actually in some respects an advantage to have been previously a defense attorney, because I have often said that defense attorneys can easily pick out when they are having sort of false arguments put before them and pick out those people who truly deserve harsh punishment as opposed to those who do not, because we have dealt with them up close.

Senator COHEN. One of the problems that we are seeing, certainly I as a sitting member of the Congress, is a dissatisfaction with the court system. There is a perception that people are beating the system, that lawyers in particular are exploiting loopholes

and technicalities which no longer find favor with the general public. You and I as students of the law can rationalize all we want in terms of saying this is really for the protection of us as opposed to this particular defendant, and yet the public has come to distrust the legal system. That does not bode well for society.

Mr. MORIN. No, I think that is a serious problem. I do think, though, however, that if you are in, like D.C. Superior Court, 99 percent of the cases are well-litigated, fairly litigated, and judges really do the right thing. It just so happens that the 1 percent or less than 1 percent sometimes where there is a controversial result is the one that gets all the publicity, and it sort of brings down a comment on the whole system. In reality, on a day-to-day basis, there is justice being done by very good judges who are making tough decisions, and sometimes that gets overlooked. I think the courts and the judiciary do a poor job at selling themselves, because the only time they make the papers or the media is when they do something controversial.

So I think it is right: We are starting to lose public confidence. But in reality, if you are in court like I am, day after day after day, there are hard-fought battles in the courtroom and a lot of justice being done, and there is not that much dissatisfaction for the people who are involved. It is the controversial cases that I think highlight some of the problems.

Senator COHEN. Let me ask you a question the press loves to ask politicians: Why do you want to be a judge?

Mr. MORIN. Actually, I thought about it a long time. I have some colleagues who were defense attorneys and then became judges who urged me to get on the bench. In my mind, I see it as one of the higher forms of community service. A lot of the judges on the D.C. Superior Court sacrifice a lot in their personal and professional lives to attempt to do better for the community, and that is what motivated me, in any event, to start thinking about that and seeing if I could make a broader impact on my community.

Senator COHEN. Are you ready to give up the practice of law?

Mr. MORIN. No, but I am prepared to. I really love what I do, to tell you the truth, but this has been a well-thought out decision, and I am prepared to give it up and go forward.

Senator COHEN. Let me go down through the Judge's proposed changes, the Rothwax rules. I will quote them for you verbatim: "No. 1, the vast and unknowable search and seizure laws based loosely on the 4th Amendment must be simplified and clarified to prevent a guessing game on the street and in the courtroom. As long as the law remains unknowable, there is no justification for the mandatory exclusion rule." What is your reaction?

Mr. MORIN. I totally agree with that. I mean, I have—I think—fairly good relationships with the detectives and police officers involved in my cases, and to me, it is almost—I do not understand what they are supposed to do on the street, and how do we expect them to understand it?

Senator COHEN. That can or should only come about, I assume, through judicial rulings, or is that something Congress should attempt?

Mr. MORIN. Well, frankly, at this point, it is a statutory matter for Congress and maybe a Constitutional matter, but I do not think

as a trial court, you would not be developing that law. You would be following the law that is in existence, so you would be constrained to a certain extent.

Senator COHEN. So it is up to Congress, then, to modify the——

Mr. MORIN. Yes, to some extent, the exclusionary rule and some of the matters would be legislative matters as opposed to trial court matters. The Supreme Court, obviously, could entertain a review of those matters but not a trial court.

Senator COHEN. Do you have any thoughts about ways in which that might be clarified so that both the criminally accused and the citizen would be protected?

Mr. MORIN. Well, I think we have vague standards in the law. I mean, I think the law with respect to warrants is fairly clear now, that to the extent that a detective or a police officer gets a warrant, those warrants are fairly much insulated from judicial usurpation. The problem we have is what we call the street activity, when the police officers are doing things that you expect a police officer to do an investigation, and under the current law, they need what is called a reasonable, articulable suspicion, whatever that means, and you could understand how a police officer may feel that they have an articulable suspicion, and then, a judicial officer does not feel it is appropriate. I think there has to be an element of good faith analysis in some of that law which does not now exist.

Senator COHEN. "The Miranda ruling is an unnecessary overreaction to past abuses that videotapes and other technology can now preclude. It should be abandoned." We all saw the television expose of the State trooper—I believe it was in South Carolina or North Carolina—who pulled over a woman and seriously abused her and abused his position. Is the Judge correct that we now have technology that will avoid the necessity for Miranda?

Mr. MORIN. That is where I would disagree with the Judge, and I think, frankly, most detectives would disagree. Many of those detectives will tell you that they like the Miranda ruling, because once they give it and the defendant waives, then there is no question about coercion. So they like it as a protection against themselves. And frankly, it many times requires them to really put their case together before they go and interview the detective.

I have been practicing 20 years, and I have never had a statement suppressed on behalf of the defendant, and I do a lot of cases. And that just goes to show you that this is sort of part of the police procedure now. And what we hear about is that one instance where someone did not follow the law. But 99.9 percent of the time, it is not an issue in criminal cases.

Senator COHEN. "Speedy trial statutes based on a precise formula of days and weeks only protect those who are most interested in getting away with crimes and manipulating the system. Reasonableness—not a ticking clock—should determine speed." I must confess error on my part if this is to be the case, because I am one of the co-authors of the Speedy Trial Act of 1978. The law mandated a specific time frame in which a defendant must have a trial with a judge, giving some discretion for extraordinary circumstances. The purpose behind the law was not to protect defendants, necessarily; it was to ensure their right to a speedy trial. The fact of the matter is the longer the delay went on, it worked to the

advantage of the defendant rather than to the State. What is your response?

Mr. MORIN. Again, I think the Judge overstates the problem. That is, on a day-to-day basis, speedy trial issues do not bind either party. Under the current law, as you know, if there is a motion filed on behalf of the defendant, it tolls the speedy trial time. That is just not a problem in the criminal justice system at this point.

Senator COHEN. "The right to an attorney should not be a factor in the investigative stage but only in the pretrial and trial stages. Asking questions and receiving answers from a suspect is a legitimate aspect of crime-solving."

Mr. MORIN. It certainly is a legitimate aspect of crime-solving; so is the presence of the lawyer. And again, I think most detectives would disagree with that, at least the detectives that I have had experience with.

Senator COHEN. At the investigative stage, assuming that the individual is not a target, then it is not a problem.

Mr. MORIN. Then he is not required. It is only when it is a custodial interrogation.

Senator COHEN. "If it appears from the evidence that the defendant could reasonably be expected to explain or deny evidence presented against him, the jury should be instructed that they may consider his failure to do so as tending to indicate the truth of such evidence."

Mr. MORIN. That is probably one of my more fundamental disagreements with the Judge. It just seems to me that that is sort of bedrock law at this point. And to upset that, would do more damage than good.

Senator COHEN. What is your experience at the trial level with juries when your clients did not take the stand?

Mr. MORIN. It depends on the jury. I have had jurors actually follow the instruction—this comes after post-trial interviews with the jurors—and some jurors will tell you the first thing they considered was his failure to testify. I think most conscientious jurors look at the evidence and follow the instructions. That is not to say that they do it all the time. But overall, my experience is that that is not a significant problem in our criminal justice system. We are not setting free guilty people because we do not hold it against them that they do not testify.

Senator COHEN. "If defendants seek pretrial discovery from the State, they should be asked to place a written version of their story in a sealed envelope before receiving that discovery to preclude manipulation and lying." Do you have a problem with that?

Mr. MORIN. No, not really.

Senator COHEN. "Peremptory challenges should be limited to three or fewer to avoid stacked juries."

Mr. MORIN. I do not have a problem with doing away with all peremptory challenges. My experience is that the prosecution wants the peremptory challenges as much as the defense. So limiting them is not a problem.

Senator COHEN. How about unanimous jury verdicts?

Mr. MORIN. I think that is important. I really think that before we deprive someone of their liberty or life, it is not too much to ask to get 12 people to agree to do so.

Senator COHEN. "American judges should be allowed a more active role in the courtroom to assure the process is swift, sure, and according to the laws of evidence."

Mr. MORIN. Well, it depends on your definition of active. I think that the primary role of the judge is to be a neutral arbiter of the litigation coming before them. So to the extent he is saying a judge should become a factfinder or an inquisitor, I think that would be inappropriate in most cases.

Senator COHEN. As a matter of fact, I believe Judge Ito has been accused by a former prosecutor of having been too active on behalf of the defense.

Mr. MORIN. I did not see that. [Laughter.]

Senator COHEN. "The fact in recent years"—and this is the final one—"an ever-increasing number of major criminal cases have had decisions reversed on technical and often irrational grounds unrelated to our core values demands that we reevaluate our fundamental philosophy and procedures."

Mr. MORIN. You know, that is just sort of a general statement. My guess is I would tend to disagree with the Judge on what his core values are versus my core values. Again, I have been practicing law for 20 years, primarily on the defense side. I do a number of appeals every year. I probably have had 1 appeal reversed. The average in any jurisdiction is less than 10 percent of the criminal trials reversed because of appeals.

Senator COHEN. What kind of cases have you basically been trying?

Mr. MORIN. Major criminal cases, be they RICO or what is called continuing criminal enterprises, death penalty and homicide cases for criminal and then on civil matters, personal injury matters.

Senator COHEN. In your approach to deciding legal issues, what would you rely on in interpreting the laws of the District and, by extension, the Constitution?

Mr. MORIN. We look to the District of Columbia Court of Appeals, and I would follow whatever mandates they have on a particular issue. That would be my obligation.

Senator COHEN. We recently passed legislation that is going to have a fairly sweeping impact on our civil justice system. The impetus for the legislation has been jury verdicts that the public has perceived to be excessive. What do you think should be the role of a trial judge in reviewing jury verdicts?

Mr. MORIN. In the civil case on the remittitur—I think that is one of the primary roles of a judge in a civil case is to make sure that the jury was not swayed by emotion and was in fact——

Senator COHEN. How do you go about doing that?

Mr. MORIN. Boy, that is a very difficult question. I mean, I think one of the ways you do it is unlike jurors who will just deal with 1 case, as a judge and a former litigator, you do have some experience in trying to value what that case was in sort of a proportionate way. And it becomes very difficult when you get to pain and suffering or personal injury cases. But I do think experience gives you some sort of gauge of reasonableness, and you can make a determination of whether this particular jury verdict was an aberration or whether the jury was concentrating on some things that they should not have.

Senator COHEN. Coffee in the lap type of thing?

Mr. MORIN. Right, where you get $8 million in punitive damages. Now in that case, as you probably know, it was remitted. And that is what a judge should do. Clearly, I do not know anything about the case, but on the face of it, it appears that the jury overreacted.

Senator COHEN. There was a case reported in today's *Wall Street Journal,* as I recall reading this morning, handed down here in Washington, where a young lawyer, he was 35 or 38, which makes him very young. . . .

Mr. MORIN. Very young.

Senator COHEN. He sued his law firm for discrimination in terms of both compensation and promotion. The jury returned a verdict of approximately $1 million and added another $1-point-something million for punitive damages. Is that the kind of case that you think the law firm would come back and look for some judicial intervention?

Mr. MORIN. Right; I mean, I don't know the facts of that case, but I think what happens in many of these news reports of large jury verdicts, they fail to report the remittitur that occurs after the verdict is publicized, and I think that is one of the important safeguards that we have in civil law, that judges have the right to remit on a damage.

Senator COHEN. A final question. How do you separate out your personal views from your judicial responsibilities? We have this notion that the judges put the robe on and are sitting there as sort of blind oracles of the law, untouched by life's experience and simply neutral arbiters of the science of the law. You know that is not true, and I know it is not true.

Mr. MORIN. No, I think you come with experience. The only sort of comparable thing I could tell you is that I was on a jury once. I was placed on a jury.

Senator COHEN. How did you get on a jury? Was this prior to becoming a lawyer?

Mr. MORIN. No, this was 2 years ago.

Senator COHEN. I thought the rule was that lawyers or law students could never be placed on a jury because they are not reasonable men and women.

Mr. MORIN. That should be the rule. [Laughter.]

But I was placed on a jury, and it is amazing how being put in that role, I knew I was in a different role. And this is neither here nor there, but the jury ended up convicting. And I was able to understand that I had a different role to play in that jury room as opposed to my role as an advocate. I would think it would be a very similar feeling. You know you are not an advocate any more; you are a judge. And one of the things, I think, that the community has to respect is to have judges who treat the proceedings fair and impartially. And when you realize that, on average, 50 percent of the people who walk out of your courtroom are losers, they should at least have the feeling that they had a fair and just hearing. And they can quibble about the merits but not the process. So, that would be my goal.

Senator COHEN. It is one of the more extraordinary divisions of the mind that we expect to put people like you on the bench based on your years of experience, and yet, once you sit on the bench, you

are supposed to set aside your experience and judge cases with total neutrality. Of course, that is not entirely possible.

Mr. MORIN. But I do think you try to be fair and impartial with your life experience. And the main think is not to become an advocate when you are a judge.

Senator COHEN. There is a phenomenon taking place in politics today. We want to nominate as our Presidents and leaders people who are untouched by Washington, who come from outside of the political sphere, who are not politicians, not part of the problem. We are looking for people riding on white horses who have been untouched by the political process. It seems to me to be something of an irony that is taking place in our system. Fortunately, we do not apply the same standard to judges.

Mr. MORIN. No, and those people tend to have a lot of money so they can come in and advertise.

Senator COHEN. Those are all of the questions I have, Mr. Morin.

Mr. MORIN. Thank you, Senator.

Senator COHEN. I can see that we are taxing the patience of the audience. I may actually call you and force you to testify about your father to see exactly what kind of a dad he has been and to get a little bit more into the intimate portrait of your father.

But let me close by saying at this point, the Committee would be pleased to receive any further statement you might wish to make about your background, your views, your general qualifications. You have pretty much expressed them, and there is no need to do more, unless you would like to do so. With that. I will conclude today's hearing and offer you my congratulations. I assure you that the Committee will move your nomination along for confirmation as soon as possible.

Mr. MORIN. Thank you very much.

Senator COHEN. Good luck.

Mr. MORIN. Thank you.

[Whereupon, at 3:01 p.m., the Committee adjourned.]

APPENDIX

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. Biographical Information

1. Name: (Include any former names used.)

Robert Edward Morin

2. Position to which nominated:

Associate Judge, Superior Court for the District of Columbia

3. Date of nomination:

December 18, 1995

4. Address: (List current place of residence and office addresses.)

Home: 5404 Broad Branch Road, N.W. Washington, D.C. 20015

Office: Fisher, Morin and Hansen, P.C. Suite 201, 419 Seventh Street, N.W., Washington, D.C. 20009

5. Date and place of birth

January 9, 1953, Boston, Massachusetts.

6. Marital status: (Include maiden name of wife or husband's name.)

Spouse: Martha Jeane Tomich

7. Names and ages of children:

Kristopher Claire Morin, age 8
Willem Sullivan Morin, age 5.

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

Secondary: Weymouth High School, Weymouth, Massachusetts,

High School Diploma (May 1974); attended September, 1972 through May 1974.

Undergraduate: University of Massachusetts, Amherst, Massachusetts, B.A., Sociology, (May, 1974); attended September, 1970 through May, 1974.

Legal: Catholic University, Washington, D.C., J.D. degree (May, 1977); attended September, 1974 through May, 1977.

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

5/74–8/74 Morin Roofing Co., Boston, Massachusetts. Roofer's assistant in family roofing company.

5/75–9/75 Catholic University Law School, Michigan Avenue, N.E., Washington, D.C. 20064. Assistant in the Law Library.

1/76–9/76 Department of Justice, Office of Administrative Counsel, 10th and Constitution Avenue, N.W., Washington. D.C. Law clerk in the Office of Administrative Counsel.

9/76–12/77 Appalachian Regional Commission, 1666 Connecticut Avenue, N.W., Washington, D.C. Law clerk in the Office of General Counsel.

1/78–10/80 Furey, Doolan and Abell, 8401 Connecticut Avenue, Chevy Chase, Maryland 20852. Law clerk, then attorney in general practice firm; primary focus in civil litigation (commercial, banking and plaintiffs negligence litigation) and criminal defense.

10/80–9/82 D.C. Law Students In Court Program, Suite 202, 419 Seventh Street, N.W., Washington, D.C. 20004. Clinical Supervisor in the Criminal Division for law school clinic operated by Consortium of Universities. Direct courtroom supervision of third-year law students representing indigent clients.

9/82–2/84 Southern Center for Human Rights (Previously Southern Prisoners' Defense Committee), 83 Poplar Street, N.W., Atlanta, Georgia 30303. Attorney in office representing death-sentenced individuals.

2/84–12/87 Office of the Public Defender, 29 Courthouse Square, Rockville, Maryland 20850. Assistant Public Defender representing persons charged with felony and capital charges, as well as individuals sentenced to death.

1987–present Fisher, Morin and Hansen, P.C., Suite 201, 419 Seventh Street, N.W., Washington, D.C. 20004. Partner in five-lawyer law firm specializing in criminal and civil litigation.

Georgetown University Law Center, 600 New Jersey, N.W. Washington, D.C. 20001. Adjunct Professor teaching Evidence (1993, 1995 appointed for 1996), Capital Punishment (1986–1995, appointed for 1996), and Clinical Supervisor at the Criminal Justice Clinic (1993).

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None.

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Fisher, Morin and Hansen, P.C., Washington, D.C. Secretary and Treasurer of my law firm which is organized as a professional corporation. Previously, the firm was formed as a partnership t/a Fisher, Morin and Kagan-Kans and I was one of the named partners.

Rosemount Bilingual Education Center, Inc., Washington, D.C. Member of Board of Directors (1992–1994).

John Oyster Bilingual Elementary School Community Council. Elected Member of Council and elected Member of the Local Restructuring Team (1993, 1994, 1995).

Coral Cantigas, Inc., Rockville, Maryland. Member of Board of Directors for Hispanic community choral group (1994–present).

12. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Bar Memberships:
District of Columbia–1980
State of Maryland–1977
United States Supreme Court–1982
United States Court of Appeals for the District of Columbia Circuit–1982
United States Court of Appeals for the Fourth Circuit–1982
United States Court of Appeals for the Fifth Circuit–1982
United States Court of Appeals for the Ninth Circuit–1982
United States Court of Appeals for the Eleventh Circuit–1982
United States District Court for the District of Columbia–1980
United States District Court for the District of Maryland–1980
United States Court of Military Appeals–1990

Past and Present Organizations:
D.C. Assoc. of Criminal Defense Attorneys (1993–present)

Md Criminal Defense Attorneys' Association (1993–present)
The Women's Bar Assoc. of the District of Columbia (1994–present)
Friends of the National Zoo (1989–present)
Friends of the Baltimore Aquarium (1989–present)
National Capitol Children's Museum (1989–present)
NAACP (1988–1990)
Common Cause (1988–1990)
Amnesty International (1988–1990)
Sierra Club (1988–1990)
Death Penalty Defense Fund (1982–1984)

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

1994—$100 to Senator Charles Robb, Virginia
1994—$100 to Andrew Sonner, State's Attorney for Montgomery County, Maryland

14. Honors and awards. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Catholic University Law School:
Otis T. Smith—highest scholastic average in first-year class.
West Award—highest scholastic average in first-year class.
AMJUR Award—highest scholastic average in Criminal Law and Estates.
Student Bar Association: Elected Director
Moot Court Board: Vice-Chancellor
Federal Bar Journal: Student Editor

District of Columbia Association of Criminal Defense Lawyers:
Lawyer of the Year (1993)

Maryland Criminal Defense Attorneys:
James R. White Award, Lawyer of the Year (1993)

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

To be published:
Panel Participation at Washington College of Law Criminal Law Society Re: Death Penalty, *American University Law Review,* (Spring, 1996). My remarks are at pages 162, 169, and 175–177.

Death Penalty Defense Materials, Southern Center for Human Rights (previously Southern Prisoners Defense Committee) (1984) (contributing author for motions manual)

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years of which you have copies and are on topics relevant to the position for which you have been nominated.

See attached galley proof of a transcript of a presentation before the Washington College of Law Criminal Law Society of the American University Law School scheduled to be published in the American University Law Review.

During the last 5 years, I made presentations at the following professional conferences, training sessions, or seminars in which I spoke on issues dealing with the trial of criminal and capital cases:

New York Capital Defender Training, New York, New York (1995)
D.C. Bar Continuing Legal Education, Trial Practice, Washington, D.C. (1995)

Close Up Foundation, Washington, D.C. (1995)
California Public Defenders' Association, Squaw Valley, California (1995)
Defending a Capital Case in Virginia VII, Lexington, Virginia (1995)
Thurgood Marshall Inns of Courts, Washington, D. C. (1995)
Capital Case Defense Seminar, Monterey California (1995)
District of Columbia Criminal Practice Institute, Washington, D.C. (1994)
Kentucky Public Advocacy Trial Institute, Faubush, Kentucky (1994)
Los Angeles County Public Defender, Los Angeles, California (1994)
Top Gun II Seminar, St. Petersburg, Florida (1993)
Death Penalty College, Santa Clara Law School, California (1993–95)
Death Penalty Defense Seminar, Atlanta, Georgia (1993)
NAACP Legal Defense Fund Death Penalty Rep. Sem. Warrenton, Virginia (1991–95)
Military Defender Services Conference, Falls Church, Virginia (1991, 1994)
Federal Public Defender Conference, New York, New York (1991)

Generally, these presentations involved training lawyers on how to try criminal and capital cases (e.g., how to conduct voir dire, cross-examine experts, the use of DNA in trials, give closing arguments, etc.). Many of the presentations were done in workshops settings and consisted of remarks by me followed by answering questions from the attendees. I do not have prepared text for any of my remarks since they are usually extemporaneous. The presentations were not transcribed.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe that I was chosen by the President because he determined I was the most qualified individual based on my litigation experience and knowledge of local court system to serve as Associate Judge for the Superior Court of the District of Columbia among the list of three (3) persons submitted by the District of Columbia Judicial Nomination Committee.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that I have the necessary qualities to serve as Associate Judge for the District of Columbia because I have a broad range of litigation and trial experience in the courts of the District of Columbia and other jurisdictions and I am knowledgeable about my community and the issues it faces.

After law school, I spent several years as an associate in a general practice law firm with my primary focus in commercial and business litigation in the District of Columbia and Maryland and some criminal defense work. Thereafter, I began working as a Supervisor in the Criminal Division of the Law Students in Court Program. In that capacity I trained and supervised third-year law students who represented indigent persons charged with crimes in the Superior Court for the District of Columbia. As part of my responsibilities with the Clinic, I also taught criminal procedure and trial practice. After 2 years with the Clinic, I worked at the Southern Center for Human Rights (previously the Southern Prisoners' Defense Committee) in Atlanta, Georgia primarily representing persons charged with capital crimes or under a sentence of death. This experience gave me the opportunity to litigate substantial constitutional issues in many different state and federal courts. After my work with the Center, I came back to this area and took a position as an Assistant Public Defender with the Maryland Public Defender. In that capacity I again represented persons charged with serious felony and capital offenses as well as persons under a sentence of death. Since 1985, I have been a partner in my law firm focusing primarily on criminal defense and civil litigation. I have represented adults and juveniles in the most serious criminal cases. In addition, I have experience litigating civil matters. As part of a small litigation law firm in the District of Columbia, we have done a variety of civil matters including both plaintiff and defense work and estate matters. As a result of my years of litigation experience, I have substantial trial experience, I have become familiar with the workings of Superior Court for the District of Columbia and am knowledgeable about its procedures and practices.

In addition to the activities that I have described, for the past 10 years I have taught as an Adjunct Professor at Georgetown Law Center on matters involving litigation and trials. My classes included Evidence, Trial Su-

pervision at the Criminal Justice Clinic and an annual seminar on Capital Punishment. I also dedicate a substantial portion of my professional time to providing pro bono representation to those persons charged with a crime who can not afford a lawyer. In addition, I contribute considerable time each year to training and educating other lawyers. I make frequent presentations at conferences to train those who wish to litigate criminal and capital cases.

In addition to my professional activities, I am active in community affairs. I have lived in the District of Columbia for over twenty (20) years. From 1992 through 1994, I served on the Board of Directors of the Rosemount Bilingual Education Center, which serves children through the Headstart Program and other outreach programs, as well as provides a day care facility for low-income and handicapped children in the Adams Morgan area of Washington, D.C. At the time I was on the Board, the Center served over 800 children of all cultures and races. Thirty percent of the children at the Center have disabilities, including AIDS. During my tenure, we dealt with a number of difficult community issues including an AIDS policy for the children and staff of the Center. More recently, my community activity has focused on James Oyster Elementary School, a bilingual, multi-cultural public school, where I am an elected member of the governing Local Restructuring Team, a member of the Oyster Community Council, and I have served as the Annual Fiesta Co-Chairperson. I also serve as pro bono counsel and am a member of the Board of Directors for Coral Contigas, Inc., a multi-cultural, community-based choir that seeks to foster understanding of different cultures through the performances of classical music from Spain, Latin America and the Caribbean.

In summary, my professional experience demonstrates that for the past 18 years I have been involved in litigating and trying cases, training other lawyers how to litigate cases and teaching law students substantive areas of the law that focus on the trial of cases. My experience as a litigator has made me knowledgeable about the Superior Court and the role of trial judges in the litigative process. Through my teaching, I have become familiar with the law with which one needs to be conversant in order to be a good trial judge. Finally, my work in the community has provided me with the experience of dealing with many different citizens and cultures that live in the District of Columbia. Overall, I believe that my legal and community experiences have prepared me well for the rigors of being an Associated Judge on the Superior Court.

B. Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Presently, I am scheduled to teach a class in Evidence at the Georgetown University Law Center during the summer session, from May, 1996–July, 1996.

3. Do you have any plans, commitments or agreements after completing government service to resume employment affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. Potential Conflicts of Interest

1. Describe all financial arrangements; deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I am a principal and shareholder in my law firm, organized as a professional corporation, Kisher, Morin and Hansen, P.C. Upon confirmation, I will formally withdraw from all direct representation of clients, resign from and sever all ties with my law flu I have an oral agreement with my partners under which I will receive compensation in the amount not to exceed fifty percent (50%) of the income generated by me during the 1996 calendar year. In the event I have not received a salary equal to fifty percent (50%) of my generated income at the time I resign from the firm, I will receive a one-time payment at end of the calendar year for the remaining amount owed.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Other than stock holdings described hereafter, I have no ongoing business investments, obligations or relationships which would involve a conflict of interest.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

I was invited by Subcommittee on Individual and Constitutional Rights, House of Representatives, July, 1993 to appear with my client, Kirk Bloodsworth, an individual once sentenced to death and later found to be innocent, to discuss the issue of the risks of executing of innocent persons. In addition in July, 1994, I was asked to appear with Mr. Bloodsworth before the Massachusetts Joint Committee on Criminal Justice to, again, provide information concerning the risk of executing an innocent person in the enforcement of the death penalty. On the day he was to testify, Mr. Bloodsworth was unable to fly to Boston to appear and, in his absence, I presented a summary of his case and his statement to the Joint Committee.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

I will comply with all provisions of Canon 3 of the Code of Judicial Conduct for the District of Columbia. Initially, I will maintain a list of all my previous clients and recuse myself from any cases involving them. With respect to potential for conflicts involving financial matters, I will maintain a list of all stock holdings and recuse myself from any cases in which they are affected. In the event that I find myself recused from many cases because of any stock holding, pursuant to Canon 4(D)(4) of the Code of Judicial Conduct for the District of Columbia, I will divest myself of the Stock. With respect to matters involving my law firm, I will comply with Canon 3(E)(b) of the Code of Judicial Conduct for the District of Columbia, and generally, I will be mindful of the underlying principle of the Code that a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. D.C. Judicial Code, Canon 3(E)(1).

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. Legal Matters

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In 1994, I brought a small claims action (No. 378–94) in the Superior Court for the District of Columbia and made complaint to the District of Columbia Department of Consumer and Regulatory Affairs, against George A. Pierce, a plumber whom I had paid for repair work at my home. Mr. Pierce took my deposit of $400, then never performed the work. I did not obtain service on Mr. Pierce in the action so the case was not pursued.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I am not aware of any unfavorable information.

E. Financial Data—Retained in Committee Files

SUPPLEMENT FOR D.C. JUDGE NOMINEES

F. Questions Concerning Statutory Qualifications Pursuant To District of Columbia Court Reform Act and Criminal Procedure Act of 1970, Sec. 11–1501(b) of the D.C. Code As Amended

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)

Yes, I have been a member of the bar of the District of Columbia since 1980.

4. If the answer to No. 3 is "No"—

(a) Are you a professor of law in a law school in the District of Columbia?

(b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?

(c) Have you been eligible for membership in the bar of the District of Columbia for at least 5 years?

(d) Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Please state the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last 5 years.

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1984–1992: 1636 Florida Avenue, N.W., Washington, D.C. 20009.

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7. Have you maintained an actual place of abode in such area for at least 5 years?

Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?

No.

9. Have you been a member of either Commission within the last 12 months?

No.

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